

and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

§ 701.109 Access to records.

(a) *Individual access to records—* (1) *Right of access.* Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) *Notification of record's existence.* Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) *Individual request for access.* Individuals shall address requests for ac-

cess to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTES) 5211, "Current Privacy Act Issuances").

(4) *Verifying identity.* (i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of American that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial

must be in writing and contain the information required by § 701.109(d).

(5) *Blanket requests not honored.* Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTES) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) *Granting individual access to records.* (i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) *Illegible or incomplete records.* Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or re-copy the document exactly.

(8) *Access by parents and legal guardians.* (i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or

incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) *Access to information compiled in reasonable anticipation of a civil proceeding.* (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Section 701.109(9)(i) and (ii) do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) *Personal notes or records not under the control of the Department of the Navy.* (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) *Relationship between the Privacy Act and FOIA.* In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTES) 5211, "Current Privacy Act Issuances", simply because he or

she failed to cite the appropriate statute or instruction.

(12) *Time Limits.* Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) *Fee schedules.*

(i) Office copy (per page).....\$.10

(ii) Microfiche (per fiche).....\$.25

(3) *Fee waivers.* Waive fees automatically if the direct cost of reproduction is less than \$15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed \$15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested

record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) *Notifying the individual.* Written denial of access must be given to the individual. The denial letter shall include:

- (1) The name, title, and signature of a designated denial authority;
- (2) The date of the denial;
- (3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;
- (4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and
- (5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and

to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) *Right to amend.* An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) *In writing.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) *Content of amendment request.* An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used